IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1155 OF 2005
IN
SUMMONS FOR JUDGMENT NO.80 OF 2005
IN
SUMMARY SUIT NO.3629 OF 2004

Gaurang V. Doshi .. Appellant

v/s.

Neera Ashok Jani .. Respondent

Mr.S.H.Karim for the appellant.

Ms.Kavita A. Shah i/by Mr.A.G.Shah for the respondent.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 22nd December, 2005

P.C.

Heard.

2. Admit.

3. Mr.A.G.Shah, advocate waives service for the respondent.

4. The appeal is heard finally at this stage.

5. We do not find any merit in the contention of the learned counsel for the appellant that the suit as framed by the plaintiff is not covered under Order XXXVII Rule 2 of the Code of Civil Procedure. A careful reading of the plaint makes

it very clear that the suit is maintainable as summary suit.

6. However, in the facts and circumstances of the case, we are satisfied that instead of passing a decree in the sum of Rs.15,50,000/-, the learned trial Judge ought to have granted conditional leave to the defendant to defend the suit on deposit of a sum of Rs.15,50,000/- for defending the claim in respect of the principal amount and unconditional leave in respect of the claim of interest.

7. We, accordingly, modify the impugned order by the following order:-

(i) The conditional leave is granted to the defendant to defend the suit for principal amount on depositing the sum of Rs.15,50,000/-.

(ii) As regards the claim of interest, unconditional leave to defend is granted.

(iii) Two months time is granted to the appellant for depositing the said amount.

(iv) Upon deposit of the amount, the suit shall stand transferred to the commercial causes and be dealt with accordingly.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)